IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 8002 of 2003

Between:

Palem Sridhar Babu S/o. Late Sri P.Paparao Naidu
R/o. Flat No.201, S.R.Residency, Jyothi Nagar,
R.C.Puram, Hyderabad-32.

..... PETITIONER

AND

A.P. State Financial Corporation, Rep. by its Managing Director,
5-9-194, Chirag Ali Lane, Abids, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more especially one in the nature of Writ of Mandamus declaring the acceptance of the application dt. 13.5.2002 made under the VRS scheme dt. 20.3.2001 as illegal, arbitrary and violative of principles of natural justice.

Counsel for the Petitioner: Mr. P.SRI RAGHU RAM

Counsel for the Respondent: MR.Y.N.LOHITA

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

O R D E R:

The acceptance of application dated 13.5.2002 made under the Voluntary Retirement Scheme dated 20.3.2001 is challenged in this writ petition as illegal and arbitrary.

The case of the petitioner is that he worked in the respondent-Corporation under various capacities, namely, Junior Assistant (Legal), Junior Officer (Legal), Assistant Manager (Legal) and Deputy Manager (Legal). In pursuance of the Voluntary Retirement Scheme introduced by the respondent vide office Order No.HRD/401 dated 20.3.2001, the Committee that was constituted identified him and intimated orally to apply for Voluntary Retirement Scheme on 12.5.2002 or to face further consequences while 13.5.2002 was the last day for applying for V.R.S. Therefore he made application dated 13.5.2002 to the respondent and the respondent without verifying the pros and cons and without following the procedure or even guidelines accepted the said application on the same day within 20 minutes time. The respondent herein issued letter dated 16.5.2002 stating that he will be relieved immediately by the concerned Senior Branch Manager. But he was relieved on 2.7.2002 and no amount was paid for the period worked after acceptance i.e. from 13.5.2002 to 2.7.2002. Hence the writ petition.

The respondent filed counter affidavit stating that the petitioner having opted and retired under Voluntary Retirement Scheme is estopped from seeking any relief after a period of one

year. The petitioner was relieved from the duties of the Corporation and a sum of Rs.9.10 lakhs after adjustment of outstanding amounts in House Building Loan, Vehicle loan etc. and PF were paid to the petitioner towards total settlement of terminal benefits under Voluntary Retirement Scheme. The question of affording opportunity does not arise since the option was exercised by the petitioner and the same was duly accepted by the Corporation. As per the guidelines postulated under the Voluntary Retirement Scheme it would not be open to an employee to withdraw the option exercised. Hence the writ petition is liable to be dismissed.

Learned counsel for the petitioner contended that the scheme introduced by the respondent is not a Voluntary Retirement Scheme since there is no voluntariness involved in the scheme and that on the last day of submitting the applications for Voluntary Retirement Scheme the petitioner had given the application under threat of termination or other disciplinary action by the respondent-Corporation and no specific procedure or guidelines have been prescribed for identification of employees to opt the scheme and the Committee has proceeded unilaterally basing on pick and choose method and the identification of unproductive and less production employees is made in an unfair and biased manner and therefore the Voluntary Retirement Scheme is not only illegal and opposed to fair-play but also violative of Article 14 of the Constitution. Hence he prays to set aside the same.

On the other hand, learned standing counsel appearing for the respondent contended that the scheme is not under challenge. The identification of the employees is done by the

Committee constituted and no mala fides are attributed to the Committee and after receiving all the benefits the petitioner cannot turn round and say that he opted for Voluntary Retirement Scheme under force. He also relied upon a decision of a Division Bench of this Court in S. Chalapathi v. Vice Chairman-cum-Managing Director, APSIDCL 2003 ALD 591.

The respondent-Corporation introduced Voluntary Retirement Scheme on 20.3.2001. The mode of identification of employees as per Clause III of the said Scheme reads as follows:

> "1. The scheme is applicable to those employees identified by the Management. The identification will be done by HRD Committee for the cadre of Deputy General Manager and below and in case of General Manager and above, the Managing Director will identify the employees.
>
> 2. Further any of the employee who is willing to retire under the scheme voluntarily may also apply for the same. Acceptance or rejection of request for Voluntary Retirement shall be at the sole discretion of the HRD Committee or the Managing Director, as the case may be, and it shall not be open for any employee to insist on acceptance or to seek reasons for the rejection of the request for Voluntary Retirement".

It is also made clear that once the request under V.R.S. has been accepted, it shall not be open to the employees to withdraw the request.

Incidentally, none of the conditions in the Voluntary Retirement Scheme introduced by the respondent-Corporation dated 20.3.2001 have been challenged as violative of any of the provisions

of the Constitution of India or arbitrary or illegal. Two modes are prescribed in the Voluntary Retirement Scheme introduced by the respondent-Corporation. One is the identification of the employees which will be done by the HRD Committee. Another is those who are willing to opt for V.R.S. may also apply for the same. The contention of the petitioner is that he was forced to submit application opting Voluntary Retirement Scheme under the threat of termination or other disciplinary action though no allegations or charges are pending against him. So under those circumstances, according to the petitioner, he made application on 13.5.2002 to the respondent and the same was forwarded to him at 4.40 p.m. He further contends that without verifying the pros and cons and without following the procedure or guidelines the respondent accepted his application on the same day within 20 minutes time. On 16.5.2002 the respondent issued the proceedings to relieve the petitioner immediately. The allegation that it was obtained by force is denied by the respondent. It is stated that the petitioner has opted for Voluntary Retirement Scheme and made an application on 13.5.2002 and the HRD Committee of the respondent-Corporation accepted the option exercised by the petitioner and the same was duly communicated to the petitioner vide letter dated 16.5.2002. It is further stated that the petitioner was relieved from the duties of the respondent-Corporation and a sum of Rs.9.10 lakhs after adjustment of outstanding amounts in House Building loan, vehicle loan etc. were paid to the petitioner towards total settlement of terminal benefits under Voluntary Retirement Scheme. The case of the petitioner is that under threat of termination or disengagement or other disciplinary action, he submitted the application opting for Voluntary Retirement Scheme.

On the other hand, the respondent-Corporation contended that the petitioner himself voluntarily submitted the application exercising his option to retire from service voluntarily and thereafter he has received all the terminal benefits and now he cannot turn round and say that the application was taken from him under threat or contemplation of disciplinary proceedings. Since the manner of taking application by the Corporation or the manner of giving the application to it by the petitioner is a disputed question of fact, the same cannot be agitated before this Court. Certainly this Court cannot entertain or resolve such disputed questions of fact.

Learned counsel for the respondent placed strong reliance on a judgment of this Court in *S. Chalapathi v. Vice Chairman-cum-Managing Director, APSIDCL* wherein it is held:

> "In similar circumstances a Division Bench of this Court in W.A. 912/1999 dated 14.7.1999, held at paragraph No.4 as under:--
>
> …once the voluntary retirement has been accepted and the appellants by their own act and conduct ratified the same up to 2.3.1999 the appellants cannot be permitted to reprobate and resile from their offer. Since funds have not been released the appellants have not been relieved from service. They have not suffered any prejudice either. Thus, in the totality of the facts and circumstances of the case, the State is directed to release the funds within two months to the Corporation. On receipt of funds from the Government the retrial benefits be given to the appellants and in terms of the offer for voluntary retirement, the Corporation will be at liberty to relieve the appellants from service".

Therefore from the above decision it is clear that once voluntary retirement has been accepted, the petitioner cannot be permitted to resile from his offer especially in view of the fact that the petitioner received all the retiremental benefits from the respondent-Corporation.

It is vehemently contended by the learned counsel for the petitioner that there is no procedure prescribed for identifying the employees by HRD Committee and therefore unfettered and uncontrolled power has been given to the HRD Committee in picking and choosing the employees of the choice of the respondent-Corporation and therefore it is clearly an arbitrary action. This Court is unable to accept the same because that question does not arise in this case in view of the fact that the petitioner was not identified by the HRD Committee as a less-productive employee. Therefore, the question of pick and choose method of employees by the HRD Committee does not arise. Consequently, it cannot be said that the Committee had proceeded unilaterally basing on pick and choose method.

No doubt, the respondent-Corporation has taken up restructuring in the Organisation with the sole object of improving its productivity and performance and the restructuring involved, inter alia, downsizing the manpower. No doubt there is no procedure prescribed for identification of the employees by the HRD Committee, but at the same time the identification of the petitioner is not based upon his performance in the Organisation but on his submission of application opting for voluntary retirement.

Since none of the conditions of the Voluntary Retirement Scheme is under challenge and there are no merits, the writ petition deserves to be dismissed and is dismissed. No costs.

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K.C. Bhanu, J.

Date: 25--07—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director,
A.P. State Financial Corporation, 5-9-194, Chirag Ali Lane, Abids, Hyderabad.

2. 2 CD copies.